

<b>Mayor and Cabinet</b>			
<b>Title</b>	Excalibur Regeneration Update		
<b>Key decision</b>	Yes	<b>Item no</b>	
<b>Wards</b>	All wards		
<b>Contributors</b>	Executive Director for Customer Services, Executive Director for Regeneration and resources, Head of Law		
<b>Class</b>	Part 1	February 28 2018	

## **1 Purpose of report**

- 1.1 The report provides an update on the Excalibur Regeneration Programme, which aims to provide 371 new high-quality new homes in Whitefoot, in partnership with L&Q.
- 1.2 The first new social rented homes on the Excalibur Estate are now complete and let to existing estate residents. The current construction phase (Phases 1&2) is due to complete in March 2018 and is comprised of 34 new homes to be let on protected social rents to existing estates residents. There are a mix of 15 2-bed houses, 5 3-bed houses, 2 4-bed houses, 11 2-bed bungalows and 1 3-bed bungalow. 5 new shared equity homes are available to freeholders wishing to remain on the estate and 18 homes will be available for outright sale.
- 1.3 The report seeks the necessary authority for the appropriation, for planning purposes, of the Council owned land within Phase 3 of the scheme, shown edged red on the plan attached at Appendix A in order to enable the powers in Section 203 of the Housing and Planning Act 2016 to be used to ensure that any restrictive covenants or other rights affecting the land can be overridden in the interests of the proper planning of the area, thereby allowing the redevelopment of the land to proceed.
- 1.4
- 1.5 The Part 2 report sets out a full budget update for Phase 3, Phase 4 and Phase 5 land assembly costs.

## **2 Summary**

- 2.1 In January 2018 the first new homes on the Excalibur Estate completed as part of an ongoing regeneration programme in partnership with L&Q. All remaining secure tenants on the next Phase of the Regeneration, Phase 3, will be moving into newbuild properties on Phase 1 and 2 by the end of March 2018.
- 2.2 In order to implement the redevelopment proposals for Phase 3, L&Q have requested that the Council appropriate the Council owned land within Phase 3 for planning purposes.
- 2.3 Mayor and Cabinet are also asked to consider the amended budget requirements in the Part 2 report.
- 2.4 A further report will be considered by Mayor and Cabinet in due course to finalise the Project Brief for phase 3 and to agree the final terms of the transfer to L&Q.

### **3 Recommendations**

- 3.1 It is recommended that the Mayor:
- 3.2 Notes the programme update contained at Section 6;
- 3.3 Notes and agrees the inclusion of 8 Ector Road, a vacant Council-owned property, within Phase 3 of the scheme;
- 3.4 subject to the consent of the Secretary of State being obtained under Section 19 of the Housing Act 1985 in respect of the parts of the land consisting of dwellings, agrees to the appropriation of the Council owned land within Phase 3 of the Excalibur Estate re-development scheme, shown edged red on the attached plan (excluding the three properties hatched red on the plan), from housing purposes to planning purposes under Section 122 of the Local Government Act 1972;
- 3.5 approves the making of an application to the Secretary of State under Section 19 of the Housing Act 1985 for consent to the appropriation of the parts of the land consisting of dwellings referred to in recommendation 3.4
- 3.6 notes that the consent of the Secretary of State is not required in respect of the parts of the Phase 3 land that do not consist of dwellings, shown coloured black on the plan attached at Appendix B, and that the appropriation of this land will therefore take effect immediately;
- 3.7 notes and agrees the increased budget required for land assembly for Phase 3; and

- 3.8 notes the current budget position in relation to Phases 4 and 5, most of which will be recovered from L&Q at the point of land transfer, as set out in the Part 2 report.

#### **4 Policy context**

- 4.1 The contents of this report are consistent with the Council's policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:
- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
  - Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
  - Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.
- 4.2 The proposed recommendations are also in line with the Council policy priorities:
- Strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport.
  - Clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment.
- 4.3 It will also help meet the Council's Housing Strategy 2015-2020 in which the Council commits to the following key objectives:
- Helping residents at times of severe and urgent housing need
  - Building the homes our residents need
  - Greater security and quality for private renters
  - Promoting health and wellbeing by improving our residents' homes

#### **5 Scheme Background and History**

- 5.1 The Council has been working with residents on Excalibur on options for the estate for many years and also with L&Q as partner for the estate since 2006. The full history is detailed in earlier Mayor and Cabinet reports.
- 5.2 In November 2010 Mayor and Cabinet agreed that the Council proceed with the regeneration of Excalibur in partnership with L&Q. This followed on from extensive consultation including an independent ballot and Section 105 consultation. Key milestones in the project since this time are set out below.
- L&Q obtained planning permission in March 2012 (detailed for Phases 1 - 3 and outline for Phases 4 - 5);

- The Secretary of State consented to the disposal of the Phase 1 and 2 land under Section 233 of the Town and Country Planning Act 1990 in October 2013.
- The Council obtained vacant possession of the Phase 1 and 2 site in 2014. 33 tenants were re-housed. 7 freeholders were bought back and the Council obtained CPO powers to assist with this.
- L&Q and the Council jointly procured Contractor Denne who demolished Phases 1 and 2 during 2014.

5.3 There were delays to the project during 2013 – 2015. Complaints about the closure of the estate roads during 2013 led to significant risks arising associated with continuing with building works which could only be mitigated through a formal Stopping Up process. This meant that roads were required to be designated as highways and then formally stopped up. This process took place between the Autumn 2013 and Spring 2015.

5.4 Once this process was resolved in March 2015, the builder reported an uplift in costs of 50% from their original fixed price. L&Q led negotiations could not reduce the costs and L&Q and the Council have subsequently been required to go through a further procurement process. These issues have delayed the scheme by 2 years.

5.5 In January 2016, L&Q selected Keepmoat as the contractor for Phase 1 and 2 on their behalf and on behalf of the Council. The development agreement and works contract were simultaneously entered into in January 2016 and the Phase 1 and 2 land was transferred for re-development. The main JCT works contract was entered into in July 2016 and is programmed to complete in March 2018.

5.6 The original Excalibur estate was comprised of 186 prefab properties, of which 178 are included within the regeneration scheme. The 8 properties not included are the 2 properties which were not included in Phase 1 (used as the TMO office and as housing for a Phase 2 decant household) and the 6 listed properties. There are 29 freeholders of which 27 are within the scheme.

The Planning Application was approved by Lewisham Planners in April 2011 and Section 106 agreed (and full planning permission achieved) in March 2012. This is detailed for decant Phases 1 – 3 and outline for the overall master plan and final Phases (4 & 5). Consultation is currently under way on the detailed planning application for the final Phases (4&5). Each of the Phase Briefs is agreed by Mayor and Cabinet prior to the land transferring to L&Q. A further report will be considered by Mayor and Cabinet in due course to finalise the Project Brief for Phase 3 and to agree the final terms of the transfer to L&Q

## **6 Programme Update**

- 6.1 There have been minor delays to the Phase 1&2 construction, which means that the new homes will now expected to be available in March 2018. A revised indicative programme for the whole scheme is shown below:

<b>Key milestone</b>	<b>Date</b>
Phase 1&2 Practical Completion	March 2018
General Vesting Date for CPO over Phase 3 land	30 March 2018
Phase 3 Vacant possession and L&Q commence demolition and enabling works under license	April 2018
Phase land transfer to L&Q	June 2018
Phase 3 commencement of main works programme	September 2018
Phase 3 Practical completion	August 2020
Phase 4 Vacant possession and Phase land transfer to L&Q and start on site	September 2020
Phase 4 Practical Completion	December 2022
Phase 5 Vacant Possession and Phase land transfer to L&Q and start on site	January 2023
Phase 5 practical completion	April 2025

## **7 Phase 3 Proposed Scheme**

- 7.1 The land comprising Phase 3 shown edged red at Appendix A. The land currently comprises of 48 prefabs. Over half of the properties are now secured using grills or property guardians. Phase 3 land includes most of Wentland Road, Wentland Close and parts of Meliot Road and Ector Road.
- 7.2 L&Q have obtained planning consent for Phase 3 (Planning Phase 1C). The proposed scheme for Phase 3 is set out in the below table:

Type	Area**	Council	Shared equity	Shared ownership	Private	TOTAL
2B Bungalow Wheelchair	76.8m2	4				
3B Bungalow	83.2m2	1				
2B House	88.4m2	8	5		7	
3B House	101.8m2	2				
3B Wheelchair house	134.1m2	2				
4B House	113.1m2	2				
over 55's 2B Apartments	65.6m2*	20				
1b Flats	50.74m2			6	9	
2B Flats	67.4m2			10	18	
3B Flats	77.1m2			1		
		<b>39</b>	<b>5</b>	<b>17</b>	<b>34</b>	<b>95</b>

7.3 Officers are in discussions with L&Q in relation to the potential to amend the 20 x 2 bedroom apartments from exclusively over 55's accommodation to general needs housing which would better suit the current housing need in the borough and make the best use of the stock. This matter will be presented to Mayor and Cabinet for consideration in due course.

## 8 Phase 3 Update on Vacant Possession

- 8.1 12 homes on Phase 3 remain occupied by secure tenants. Five households from Phase 3 have already moved into their newbuild homes in Phase 1&2.
- 8.2 All secure tenants on Phase 1&2 Excalibur have been allocated newbuild properties. Remaining tenants will move into the newbuild properties when they become available in March 2018. The Council has obtained postponed possession orders for all tenanted properties on Phase 3.
- 8.3 There are 3 freehold properties remaining in Phase 3 which are shown hatched red on the plan at Appendix A. Buyback terms have been agreed with two of the three freeholders, who are taking advantage of the offer to move into newbuild properties on the estate as tenants or equity owners. Officers are working with the remaining freeholder around their options which does include the same opportunity to remain on the estate.

- 8.4 There is a Compulsory Purchase Order (CPO) in place for the Phase 3 land. The CPO was confirmed on 7<sup>th</sup> December 2015 and a Notice of Confirmation and Intention to make a General Vesting Declaration was published in the South London Press was advertised on 15<sup>th</sup> December 2015.
- 8.5 The Date has been set as the 30<sup>th</sup> March 2018 and legal notices have been issued in respect of this. Ownership of any of the remaining three properties which has not been acquired by agreement prior to that date will therefore vest in the Council on 30 March 2018 and the Council will be entitled to possession of the properties. This does not affect the rights of the owner in respect of compensation and where compensation has not been agreed at the Vesting Date, owners are entitled to request advance payments of compensation.
- 8.6 A further report will be submitted to Mayor and Cabinet to agree the final Phase Brief with L&Q for Phase 3, prior to the final terms of the Phase 3 Land Transfer being agreed. Officers are recommending the appropriation of the site to planning purposes is dealt with now to avoid any delay.

## **9 8 Ector Road**

- 9.1 8 Ector Road, a 2 bedroom bungalow, has until now been included in Phase 4 of the scheme. The residents have been relocated and the property is empty. There are no plans to re-let the property and to leave the property empty presents a risk of anti-social behaviour.
- 9.2 The location of the property provides challenges in relation to accessing and decommissioning the services for the Phase 3 site and so it is proposed that this property is now included within the Phase 3 site boundary as shown on the attached plan at Appendix A.

## **10 Phase 3 land appropriation**

- 10.1 Under Section 226(1)(a) of the Town and Country Planning Act 1990 the Council has power to acquire compulsorily land in its area for planning purposes if it thinks that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land. The Council must not exercise the power under Section 226(1)(a) unless it thinks that the development/re-development or improvement is likely to contribute to the achievement of one or more of the following objects:

- (a) the promotion or improvement of the economic well-being of the area;
- (b) the promotion or improvement of the social well-being of the area;
- (c) the promotion or improvement of the environmental well-being of the area.

10.2 The Council has power to appropriate land for planning purposes on the same basis. In this case, the appropriation of the land for planning purposes will facilitate the development of the land in question. The development of this land contributes to the social well-being of the area by providing 39 new general needs homes for rent, 5 shared ownership properties, 17 shared ownership properties and 34 private sale homes. The carrying out of development also contributes to the economic and environmental well-being of the area.

10.3 Land is held by the Council subject to any existing interests and rights belonging to third parties and the land will be sold subject to any such interests and rights on disposal. However, under Section 203 of the Housing and Planning Act 2016, a person may carry out building work or use land to which Section 203(1) and 203(4) apply even if it involves interfering with a relevant right or interest or, breaching a restriction as to the user of the land arising by virtue of a covenant. The power applies where:

- (i) there is planning consent for the building works;
- (ii) the land has at any time on or after 13 July 2016 either been vested in or acquired by the authority or appropriated for planning purposes;
- (iii) the authority could acquire the land compulsorily for the works/use; and
- (iv) the works/use is for purposes related to the purposes for which the land was vested, acquired or appropriated.

The power will therefore apply following the appropriation of the land for planning purposes.

10.4 The purpose of the appropriation of the land to planning purposes is to facilitate the re-development of the site by ensuring that third party rights do not impede the carrying out of the development and subsequent use of the land.

10.5 Where rights are extinguished, the owners of any such interests are entitled to compensation calculated under the compulsory purchase compensation rules for injurious affection. However, appropriation removes the potential for excessive compensation claims and the ability for owners to obtain injunctions preventing the redevelopment or claim damages.

- 10.6 The estate roads and footpaths within Phase 3 are subject to vehicular and pedestrian rights of way which were granted to Freeholders on the estate. These rights could therefore potentially adversely affect the redevelopment of the site. This report is proposing that the site is appropriated from housing purposes to planning purposes which would extinguish the rights of way over this land. Officers are satisfied that the loss of these rights within the site will not have any impact on the use and enjoyment of any properties who technically benefit from them. This is because vehicular and pedestrian access to the estate will be maintained to these properties throughout the redevelopment of Phase 3.
- 10.7 Assessment of compensation for the loss of rights would be calculated on the basis of the before and after market value of the affected properties. It will be for the owners to demonstrate that the loss is likely to cause inconvenience to them and affect the enjoyment of their properties and to substantiate any claim for compensation.
- 10.8 There are three properties within the Phase 3 site boundary which are not currently owned by the Council. These are shown hatched red on the plan at Appendix A and are subject to the Compulsory Purchase Order as referred to in Section 8. As the Council can only appropriate land in its ownership, these properties are not included in the appropriation. However, as they will have either been acquired by or vested in the Council, the provisions of Section 203 will apply in the same way as they will apply to the land being appropriated for planning purposes.

## **11 Phase 4 Update**

- 11.1 When the Excalibur Regeneration Programme commenced, there were 51 tenanted properties and 4 freehold properties on Phase 4. 2 tenanted and 2 freehold properties were subsequently listed and excluded from the scheme.
- 11.2 A voluntary decant of tenanted properties commenced in October 2014. A budget was allocated to cover the statutory payments for Homeless and Disturbance and households were invited to speak to the decant officer to understand all the options available to them. Those residents who wished to move from the estate into alternative accommodation have been supported to bid for properties via the Council's Choice-based Lettings System Homesearch.

There are 34 tenanted households remaining in Phase 4, including 11 who have been allocated to newbuild properties which will complete in March 2018 on Phases 1&2. There are also 2 freehold properties remaining on this phase.

- 11.3 Based on the current indicative programme, vacant possession of the Phase 4 land is required by September 2020.
- 11.4 The Part 2 report sets out the current budget allocation and spend to date for Phase 4 land assembly.

## **12 Phase 5 update**

- 12.1 At the start of the regeneration scheme there were 31 tenanted households and 7 freehold properties on Phase 5. 2 tenanted properties were subsequently listed and excluded from the scheme. Phase 5 voluntary decant and buybacks of freeholder properties commenced in October 2014
- 12.2 22 tenanted households remain, including 4 households who have been allocated properties in the newbuild homes on Phase 1&2, which will complete in March 2018.
- 12.3 The Council has successfully bought back 3 Freehold Properties on this Phase, and will continue to engage with Freeholders to buy back the remaining 4 freehold properties by agreement.
- 12.4 The Part 2 sets out the current budget allocation in more detail and spend to date for Phase 5 land assembly.

## **13 Listed properties**

- 13.1 6 properties (1, 3, 5, 7 and, 25 and 39 Persant Road) on the Excalibur Estate were designated as Grade II listed by English Heritage in March 2009.
- 13.2 The listing was made for the following principal reasons:
- special interest as part of the largest surviving post-war prefab estate in England, a unique example of prefab estate planning on a large scale;
  - their location in one of the most heavily-bombed boroughs in the capital compounds this historic significance;
  - the Uni-Seco prefabs are also of great architectural interest as structures built using the innovative system of prefabrication which display modernist influences in their wrap-around corner windows and appearance of flat roofs.
- 13.3 Of the properties 4 are tenanted and 2 are freehold. The repairs and maintenance of the tenanted properties had been the responsibility of the Excalibur TMO until March 2016 when the repairs and maintenance service was transferred to Lewisham Homes, following a breach.

- 13.4 Over the years the TMO had failed to maintain the listed properties to a satisfactory level. When this was brought to the attention of the Council in early 2015, the Council engaged a surveyor to assess the properties and to propose a series of works to bring them up to a reasonable standard. A comprehensive scheme of works was proposed, which included:
- Full rewires
  - New heating systems
  - New roofs
- 13.5 In 2015 the Council tendered for improvement works to the four listed properties. The tenders returned were in the region of £50k (plus on costs) per property. This was higher than originally anticipated due to the listed status and presence of asbestos. This investment did not represent good value for the Council and it was proposed that the tenants should be offered re-housing prior to any works being undertaken.
- 13.6 All tenants in the listed properties have been offered a meeting with the decant officer to discuss their housing need and to complete a housing application. They have been given band 1 priority for re-housing in Lewisham, under management discretion. There is also one resident freeholder and one absentee freeholder. These freeholders will not be bought back under the regeneration proposals and the Council doesn't owe them a re-housing duty.
- 13.7 Repairs and Maintenance on the estate is now being managed by Lewisham Homes. They have been carrying out safety checks and remedial works on all properties they have been able to access, including the listed pre-fabs. The Council is committed to ensuring tenant safety and will undertake all necessary repairs and maintenance through Lewisham Homes.

## **14 Financial Implications**

- 14.1 The financials implications are contained within the Part 2 report.

## **15 Legal Implications**

- 15.1 The Council has power under the Local Government Act 1972 to appropriate land which is no longer required for the purpose for which it was acquired to use for any other purpose for which it has power to acquire land. In the case of land held for housing purposes, that power is subject to Section 19 of the Housing Act 1985. Under Section 19(1), an authority may not appropriate housing land with dwellings on it for other purposes without the consent of the Secretary of State. In this case, Section 19(1) is therefore engaged in respect of the parts of the land consisting of dwellings and the appropriation of those parts of the Phase 3 site is therefore subject to Secretary of State's consent being obtained. The legal implications associated with the appropriation of the site to planning purposes and the effect of Section 203 of the Housing and Planning Act 2016 are set out in full in Section 10 of this report.

- 15.2 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 15.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 15.4 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 8.3 above.
- 15.5 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 15.6 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

- 15.7 The Human Rights Act 1998 effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members therefore need to have regard to the Convention.
- 15.8 The rights that are of particular significance to the Mayor's decision in this matter are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).
- 15.9 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1<sup>st</sup> Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 15.10 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 15.11 Therefore, in reaching his decision, the Mayor needs to consider the extent to which the decision may impact upon the Human Rights of estate residents and to balance this against the overall benefits to the community which the redevelopment will bring. The Mayor will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.
- 15.12 The effect of the extinguishment of the rights is set out above and is not considered to be adverse. It is also relevant to the consideration of this issue, that affected owners will be entitled to compensation for any diminution in the value of their properties resulting from the extinguishment of these rights.

## **16 Crime and disorder implications**

- 16.1 There are no crime and disorder implications arising from this report.

## **17 Equalities implications**

- 17.1 There are no equalities implications arising from this report.

## 18 Environmental implications

18.1 There are no environmental implications arising from this report.

## 19 Background Documents and Report Originator

19.1 If you have any queries relating to this report please contact Jeff Endean on 020 8314 6213.

<b>Title</b>	<b>Date</b>	<b>File Location</b>	<b>Contact Officer</b>
Regeneration of Excalibur Estate – Update & Section 105 Consultation	18 January 2012		
Regeneration of Excalibur Estate - CPO	7 March 2012		
Re-development of Excalibur: Demolition Notice and Future Lettings	30 June 2012		
Regeneration of Excalibur Estate - Update	10 April 2013		
Housing Regeneration Schemes Update	1 October 2014		
Excalibur Update	22 March 2017		

## **Appendices**

Estate roads for appropriation  
Site boundary